



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/690,715

10/22/2003

Robert E. Burrell

14072-037001 / W 618

9773

26161 7590 07/11/2007

FISH & RICHARDSON PC

P.O. BOX 1022

MINNEAPOLIS, MN 55440-1022

EXAMINER

PAK, JOHN D

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

07/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/690,715

Applicant(s)

BURRELL ET AL.

Examiner

JOHN PAK

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,34-38 and 59-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,34-38 and 59-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

Art Unit: 1616

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/23/2007 has been entered.

The restriction requirement of 3/22/2006 and applicant's election of the invention of Group II (5/2/2006) continue to apply here in this RCE. Claims 1-5, 34-38 and 59-75 will presently be examined to the extent that read on the elected subject matter.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 34-38, 59-60, 62, 64-65, 67-69, 70, 72, 73, 75 are rejected under 35 U.S.C. 102(b) as being anticipated by Fox, Jr. et al. (US 5,374,432, hereinafter Fox et al.).

Fox et al. explicitly disclose a topical composition comprising 0.1-2 wt% of a silver compound such as silver oxide + sterile carrier (claims 1-2). Ointment base is explicitly disclosed (column 1, lines 7-8 and 35-66; column 2, line 8).

There are only 12 silver compounds in Fox's claim 1 and silver oxide is one of them. Silver oxide ointment is therefore clearly disclosed and envisaged. Claims directed to "lotion" and "paste" are included in this ground of rejection because such

Art Unit: 1616

forms are readable on ointments. Applicant does not provide a distinguishing definition of the various forms claimed in the instant claims.

The claims are thereby anticipated.

Claims 1-5, 34-35, 37-38, 59-60, 62, 64-65, 67-69, 70, 72, 73, 75 are rejected under 35 U.S.C. 102(b) as being anticipated by Derwent abstract 1973-42926U.

Derwent abstract 1973-42926U discloses 0.5-1.5 wt% silver oxide in an ointment base for treating skin injuries such as burns.

Claims directed to "lotion" and "paste" are included in this ground of rejection because such forms are readable on ointments. Applicant does not provide a distinguishing definition of the various forms claimed in the instant claims.

The claims are thereby anticipated.

Claims 1-5, 34-38, 59-62, 64-65, 67-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Leuven (US 4,289,758).

Van Leuven explicitly discloses a colloidal dispersion of 5% silver oxide in mineral oil, which is known to be used as an antiseptic ointment (column 2, lines 2-4).

Claims directed to "cream," "lotion" and "paste" are included in this ground of rejection because such forms are readable on an ointment made from a colloidal dispersion in mineral oil, as disclosed by Van Leuven. Applicant does not provide a distinguishing definition of the various forms claimed in the instant claims.

The claims are thereby anticipated.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 34-38, 59-60, 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox et al. (US 5,374,432) in view of Davis (US 5,143,717).

Fox et al. disclose an anti-infective topical composition comprising 0.1-2 wt% of a silver compound such as silver oxide + sterile carrier (claims 1-2). Silver sulfadiazine can be substituted for silver oxide (claim 1). Wound and burn treatment is taught (column 1, lines 35-37).

Davis discloses an antibiotic foam system for delivering treatment in foam form to areas such as burn areas (column 1, line 53 to column 2, line 2). The foam is water soluble, so it makes it is painless to remove from burn areas (column 1, lines 31-46; column 4, lines 52-54; claim 1). Although silver sulfadiazine is exemplified as the antibiotic in the foam, "substitution of other antibiotics" is taught (column 6, lines 6-8).

Fox et al. do not specifically disclose a foam pharmaceutical carrier + silver oxide, as claimed by applicant. However, the disclosure by Fox et al. is broadly suggestive of various topical carriers (claim 1). Carriers as diverse as water, ointment base, and water-in-oil emulsions are disclosed by Fox et al. (column 2, lines 7-9). Therefore, one having ordinary skill in this art would have been motivated to utilize

Art Unit: 1616

Davis' foam system to deliver silver oxide, as claimed, in view of the advantage said foam provides in water solubility and painless removal.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly disclosed or suggested by the teachings of the cited references.

Claims 1-5, 34-38, 59-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox et al. (US 5,374,432) in view of Antelman (US 6,258,385).

Fox et al. disclose an anti-infective composition for treating topical microbial infections comprising 0.1-2 wt% of a silver compound such as silver oxide + sterile carrier (claims 1-2). Carriers as diverse as water, ointment base, and water-in-oil emulsions are disclosed. (column 2, lines 7-9). Wound and burn treatment is taught (column 1, lines 35-37).

Antelman discloses tetrasilver tetroxide for treating various dermatological conditions, including cold sores, blisters, herpes simplex, acne, skin chafing, cracking, itchiness, skin peeling (paragraph bridging columns 1-2), fungus infection (Example 2), and infected bleeding ulcers (Example 12). Creams, ointments, gels, liniments, salves, petroleum jelly, and other similar topical formulations are disclosed as being preferred (column 3, lines 28-43). 50-250,000 ppm concentration, which is equivalent to 0.005-25 wt%, is disclosed (column 3, lines 44-50).

Fox et al. do not expressly disclose all the pharmaceutically acceptable carriers recited in applicant's claims. However, Fox's anti-infective composition is a topical composition with a topical carrier for treating topical microbial infections including wounds, so the ordinary skilled artisan would have been motivated to utilize known pharmaceutically acceptable topical carriers. The claim-recited carriers are all well-known topical carriers, and thus their use with Fox's anti-infective agents would have been fairly suggested even without any teaching from a secondary reference. Antelman's disclosure is evidence that the claimed topical carriers are suitable alternatives for topically delivering antimicrobial substances.

While "lotions" and "pastes" are not disclosed in verbatim language by Antelman, such carriers or formulation types overlap substantially with the ones that are expressly disclosed, viz. creams, ointments, liniments, salves, gels, petroleum jelly. While a foam carrier is not expressly disclosed by Antelman, given the multiple topical formulations enumerated and in view of clear suggestion of other topical formulations ("and the like" at line 35 of column 3), other suitable topical formulation types such as foams would have been fairly suggested.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly disclosed or suggested by the teachings of the cited references.

For these reasons, all claims must be rejected at this time.

Art Unit: 1616

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**.

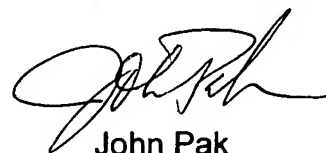
The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Johann Richter, can be reached on **(571)272-0646**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John Pak  
Primary Examiner  
Technology Center 1600